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Before the  
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Overcoming Obstacles to Telephone  
Service for Indians on Reservations

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BO Docket No. 99-11  
DA 99-430

COMMENTS OF SOUTHWESTCO WIRELESS, L.P.

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**COMMENTS OF SOUTHWESTCO WIRELESS, L.P.**

Southwestco Wireless, L.P. ("Southwestco"),<sup>1</sup> hereby responds to the Commission's request for comments on actions the Commission should take to overcome obstacles to providing telephone service to Indians on reservations.<sup>2</sup>

**SUMMARY**

The universal service provisions of the 1996 Telecommunications Act make access by every American to a broad array of communications services a cardinal goal of federal telecommunications policy. The Commission has correctly identified service to tribal reservations as one area in which the goal of universal service

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<sup>1</sup> Southwestco is a partnership which is ultimately owned by Bell Atlantic Corporation.

<sup>2</sup> Public Notice, "FCC to Hold Second Public Hearing in Series of Telephone Service for Indians on Reservations," BO Docket No. 99-11, DA 99-430, released March 2, 1999. The Public Notice asked for written comments on or before May 28, 1999.

remains unfulfilled by landline service. Given continuing low penetration rates on Indian lands and the poor economic conditions that exist in many of these difficult to reach areas, the Commission is right to consider specific actions to bring the benefits of communications services to these areas. Because wireless services can overcome many of the hurdles that confront landline service, they should be an integral part of the solution.

Southwestco is licensed to provide commercial mobile radio service ("CMRS") to wide areas of Arizona and New Mexico, including many Native American reservations and pueblos. Southwestco is eager to respond to the Commission's challenge regarding service to Native Americans, and believes it is favorably positioned to provide basic telephone service to the underserved, including Indians on reservations in Arizona and New Mexico. But it has been impaired by the climate of regulatory uncertainty that surrounds CMRS generally, and CMRS as a universal service provider in particular. Unresolved Commission proceedings as to the regulatory status of wireless providers which seek to offer local loop and other new services, and the many legal difficulties other CMRS providers have had in qualifying as universal service providers, have had a chilling effect on Southwestco's ability and willingness to become a provider of these services. Southwestco urges the Commission to address these matters quickly and forcefully. Doing so will help wireless providers to contribute to meeting the needs of individuals on Indian reservations and in other underserved rural areas.

**I. WIRELESS CAN CONTRIBUTE TO ACHIEVING THE COMMISSION'S UNIVERSAL SERVICE GOALS ON INDIAN RESERVATIONS.**

Southwestco submits these comments to emphasize the important role that wireless providers can play in bringing telephone service to unserved Americans, not just on Indian reservations but in all parts of the nation. Testimony at the hearing identified the exceptionally high cost of delivering landline services to remote areas having low population densities, high long distance rates due to small landline local calling areas, and landline-specific regulatory issues as obstacles to affordable access to telephone service.<sup>3</sup> The record of the companion proceeding concerning New Mexico reservations revealed landline telephone penetration rates as low as 22 percent, and penetration rates on Arizona reservations are also well below national and state-wide averages.<sup>4</sup>

CMRS can overcome these obstacles. Southwestco's cellular service and other wireless services offer a far more efficient method to bring telephone services

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<sup>3</sup> E.g., Testimony of Carl Artman, Airadigm Communications, March 23, 1999; Statement of Jeff Olson, GTE Service Corporation, March 23, 1999 (noting landline densities of as little as two lines per square mile); Testimony of Alison Hughes, Arizona Telemedicine Program, March 23, 199 (documenting inadequacy of landline facilities); Testimony of Aloa Stevens, Citizens Communications and Navajo Communications Company, March 23, 1999 (it is uneconomical for landline carriers to build the last mile in remote areas).

<sup>4</sup> U S West Comments, March 31, 1999, at 3-4. Several other reservations had penetration levels in the 40-50% range, still far below the averages. *Id.*

to scattered people and communities, where building and maintaining landline connections is exceptionally expensive. Wireless carriers are not restricted in their "local" service offering by state-defined local calling areas, and their rates and service offerings are not subject to state regulation.

In fact, wireless carriers are offering increasingly large calling areas at distance-insensitive rates without additional long-distance charges. This is an important benefit to subscribers who live in scattered and/or rural communities because they can place calls over large distances without incurring toll charges that they would otherwise pay for a landline call to the same destination.<sup>5</sup> In these and other ways, wireless offers the solution to bringing the many benefits of telecommunications to these individuals.<sup>6</sup>

Southwestco has extensive experience as a Commission-licensed cellular carrier in providing access to telephone service to Indian reservations as well as large rural areas in Arizona and New Mexico. Its licensed areas encompass not only Phoenix and Tucson but broad areas that extend from the state's northern

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<sup>5</sup> Information as to the growing availability of these wide area wireless service plans and the particular benefits they bring to residents of rural and remote has been presented in a separate Commission rulemaking. Policy and Rules Concerning the Interstate Interexchange Marketplace, CC Docket No. 96-61, Further Notice of Proposed Rulemaking, FCC 99-43 (released April 21, 1999); Comments of Bell Atlantic Mobile, Inc., filed May 27, 1999.

<sup>6</sup> E.g., Testimony of Christopher McLean, Rural Utilities Service, U.S. Department of Agriculture, March 23, 1999, at 8 ("Wireless local loops can be built quickly so that low penetration rates could be remedied in a short time.")

boundary southward all the way to the border with Mexico. Southwestco is licensed to provide wireless service in areas that encompass many of the Indian lands in the state, including the following reservations and designated lands: Ak-Chin, Fort McDowell Mohave-Apache, Gila River, Havasupai, Hopi, Hualapai, Navajo, Pascua Yacui, Salt River Pima-Maricopa, San Carlos-Apache, San Juan Southern Paiute, Tohono O'dham, Tonto Apache, White Mountain Apache, Yavapai Apache, and Yavapai-Prescott. Southwestco estimates that its licensed area in Arizona currently covers 100,000 Native Americans. It fully covers nine of the smaller reservations; in total it covers approximately 15,000 square miles, about 35 percent of the 41,000 square miles of reservations in the state. Southwestco also covers parts of New Mexico, including nine Pueblos: Cochiti, Isleta, Jemez, Laguna, San Felipe, Sandia, Santa Ana, Santo Domingo, and Zia.

Southwestco has constructed cell sites and made other significant network investments to serve these areas. Yet its penetration rates on reservations average less than one percent. Low penetration is caused by several factors including economic resources and lack of awareness. As a result of a coordinated effort to make residents on reservations aware of the availability of wireless services, the Tohono O'Odham reservation has helped to increase the penetration rate to around three percent even though its 4,500 square miles of territory make it the second largest reservation in Arizona. The Tohono O'Odham tribe and Southwestco achieved this by cooperatively developing distribution channels and pricing options

to serve tribal members. Even more members could obtain wireless service if federal universal service support for wireless was readily available.

The goal of this proceeding – to identify actions that can be taken to improve access to telephone service – meshes perfectly with another goal the Commission has set: to promote wireless “convergence” with landline service, in order to bring more competition and promote the public interest benefits of expanded wireless service.<sup>7</sup> The Commission has repeatedly said that it will look to wireless carriers to compete with landline. To make that goal a reality, it has also stated that it intends to clear away barriers that are impeding wireless growth.

## **II. WIRELESS WILL NOT BE ABLE TO CONTRIBUTE EFFECTIVELY UNLESS REGULATORY BARRIERS ARE REMOVED.**

Two overarching obstacles, however, stand in the way of achieving these parallel universal service and competition goals. Until these obstacles are removed or at least lowered, wireless is unlikely to become a full competitor to landline, nor

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<sup>7</sup> “We are also committed to bringing competition to local telecommunication markets generally, consistent with the central Congressional mandate of the 1996 Act. In this regard, we wish to ensure that there are no regulatory impediments to the evolution of wireless carriers into more effective competitors vis-à-vis the local wireline telephone companies.” 1998 Biennial Review: Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Notice of Proposed Rulemaking, WT Docket No. 98-205 (released December 10, 1998) (“Spectrum Caps NPRM”), at ¶ 5.



will it be likely to offer expanded services to the residents of Indian lands and other areas most in need of telephone service. By taking such actions, the Commission will simultaneously promote the goal of universal service on Indian reservations and foster increased competition among providers.

**1. *Actively Advance the Deregulatory, Competitive Paradigm for Wireless Service.*** The first obstacle is the Commission's adherence to an old landline regulatory paradigm for wireless. While in some cases it has recognized the need to replace that paradigm with one that relies on market forces to promote improved service and increased competition, its steps to date have been halting. It has often treated wireless service as a mere adjunct to landline and has appeared reluctant to remove the regulatory shackles that impede wireless from obtaining its full potential as a provider of basic telecommunications services to individuals.

In a recent letter to the Commission (which is attached to these Comments), Southwestco's affiliate Bell Atlantic Mobile ("BAM") more fully discussed the goal of "convergence without re-regulation." While sharing the Commission's objective of promoting wireless as a competitive entrant into landline markets, BAM noted that many unresolved Commission proceedings stood in the way of this goal.

For example, subjecting new competitive wireless services to anything more than minimal regulation would be wrong policy because imposing conventional regulation would increase costs as well as decrease incentives for wireless carriers to enter new markets and seek to attract customers without phone service. Thus in

1996, the Commission sought comment on whether to apply the deregulatory model of CMRS to fixed services offered by CMRS providers.<sup>8</sup> But the Commission has not acted. Wireless carriers are cautious because they must anticipate and factor in the risks of being regulated in offering the very competitive local loop and other services that the Commission recognizes are needed to promote competition and universal service. The regulatory uncertainty that surrounds these offerings discourages wireless carriers from making the investments in new network infrastructure, information systems and other other resources that expanding into these rural areas requires.

Delay in resolving the other pending proceedings listed in BAM's letter has also served as a disincentive to wireless-landline convergence. For example, the record in the "spectrum cap" proceeding indicated that without the ability to acquire the substantial additional spectrum that is needed to provide the capacity to offer high-speed data, digital and other services, wireless carriers are less likely to make the investments in advanced services and offer them in rural areas.<sup>9</sup>

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<sup>8</sup> Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965 (1996).

<sup>9</sup> Spectrum Caps NPRM, at ¶ 5; see Bell Atlantic Mobile, Inc. Comments filed January 25, 1999. These comments included a declaration from two economists which concluded, "A spectrum constraint in high-density areas lowers the return, and thus the incentives, to developing new services which would otherwise benefit the entire nation, including lower-density rural areas." Statement of Drs. Robert Crandall and Robert Gerstner, at ¶ 62.

In that same proceeding the Commission stated, "We believe that trusting in the operation of market forces generally better serves the public interest than regulation. The Commission should consider imposition of regulation when there is an identifiable market failure and imposition of the regulation would serve the public interest because it is targeted to correct that failure."<sup>10</sup> The Commission should apply that standard to this and other wireless regulation proceedings, and choose the solution that effectuates that declared policy. By promptly concluding these proceedings and forcefully adhering to a deregulatory model for wireless, the Commission will encourage wireless carriers to do precisely what it wants them to do – offer new service both as a competitor to landline service and as the only telephone service for certain remote and rural areas.

**2. *Eliminate Obstacles to Wireless Carriers Serving as Universal Service Providers.*** Many Indian lands are considered high-cost areas, making the delivery of landline telephone services at an affordable rates uneconomical without the carrier's ability to recoup its costs.<sup>11</sup> The second action that the Commission should thus promptly take is to eliminate the current obstacles to wireless carriers who seek to become eligible telecommunications carriers under the universal service program. There should be no question that, as a matter of law as well as policy, wireless carriers should have the same access to the same level of universal service

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<sup>10</sup> Spectrum Caps NPRM at ¶ 5.

<sup>11</sup> See Western Wireless Comments, February 10, 1999, at 2-3.

funding as landline carriers. Section 214(e) of the 1996 Act and the Commission's implementation of that provision both make clear that all telecommunications carriers (including wireless) may qualify as eligible telecommunications carriers ("ETCs"), and that the Commission should encourage competition in the provision of universal service to high cost areas.

However, three years after the enactment Section 214(e), wireless carriers continue to face obstacles to their ability to become ETCs and obtain universal service cost support. For example, one state commission has restricted the areas in which wireless carriers are entitled to qualify as an ETC and thus obtain cost support to areas with fewer than 10,000 access lines, a limit that is not imposed on incumbent carriers, and has also restricted the ability of wireless carriers to offset the costs of providing universal service. These discriminatory restrictions were challenged as violating Section 253 and other provisions of the 1996 Act.<sup>12</sup> They clearly frustrate the ability of wireless carriers to qualify as universal service providers, but the Commission has not taken action against them.

Southwestco understands that another state commission has refused to permit wireless carriers to qualify as ETCs unless they commit to provide service state-wide. Given that wireless carriers are federally licensed to provide service

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<sup>12</sup> "Commission Seeks Comment on Western Wireless Petition for Preemption of Statutes and Rules Regarding Kansas State Universal Service Fund," File No. CWD 98-90, released August 4, 1998; Comments of Bell Atlantic Mobile, Inc., filed September 3, 1998.

only to discrete geographic markets that are not coterminous with state borders, that state commission's action impairs wireless carriers from participating in the universal service program. States cannot lawfully impose particular restrictions or discriminatory conditions on wireless providers which seek to become ETCs. These constraints frustrate the federal goals for an expanded and competitive universal service system. Given the current climate of uncertainty over these and other issues, however, Southwestco and other wireless carriers are reluctant to make the considerable effort to obtain ETC status.

The Commission has several issues before it in the universal service docket in which wireless carriers have raised numerous concerns about their difficulty or outright inability to qualify as universal service providers.<sup>13</sup> Promptly concluding those proceedings by removing barriers will help to clear away disincentives for wireless carriers to compete for universal service support, and will thus help to meet the needs of Indians and other residents in high-cost areas which have to date not been served adequately. The Commission has recognized its responsibilities in the ETC process by, for example, exercising its authority pursuant to Section 214(e)(6) of the Act to grant ETC status to several entities providing service to

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<sup>13</sup> For example, in the universal service docket, parties have raised concerns about the impact of various cost mechanisms on their ability to obtain cost support. Uncertainty over these issues impairs wireless carriers from developing business plans to seek to qualify for support to provide high-cost service. See, e.g., Federal-State Board on Universal Service, CC Docket No. 96-45, Comments of Western Wireless Corp., December 23, 1998.

reservations.<sup>14</sup> It clearly has a role in ensuring that wireless and other telecommunications providers are able to become ETCs. Implementing that responsibility will help achieve the goals of a competitive and non-discriminatory universal service system in which wireless as well as landline service can play an important role.

## CONCLUSION

Southwestco urges the Commission to resolve as soon as possible the many pending regulatory issues affecting commercial mobile radio service providers and universal service, to apply the deregulatory, competitive paradigm that should apply to wireless, and to remove barriers to wireless carriers as universal service providers. These actions will not only serve the goals of the 1996 Act, but will also

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<sup>14</sup> See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, 12 FCC Rcd 22947 (1997).

help to encourage wireless carriers to expand their services to Indian lands and will thereby promote the important goals underlying this proceeding.

Respectfully submitted,

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Dated: May 28, 1999

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**S. Mark Tuller**  
Vice President - Legal and External Affairs  
General Counsel and Secretary

April 29, 1999

Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th St. SW  
Washington, D.C. 20554

Re: **Top Priorities – "Convergence Without Re-Regulation"**

Dear Tom:

As promised, here are Bell Atlantic Mobile's priorities, coupled with a request for action.

But first a vote of confidence. The vote of confidence is for the positive atmosphere from the Bureau and the Commission during 1999. I'm encouraged by the willingness to recognize the differences between the wireless industry and other segments of the communications business. I'm thinking of your "Wireless Day" and "CNI" plans. In my mind, the Bureau has made progress in refocusing on competition, instead of regulation, as the key driver for wireless.

The request for action is for more of the same, urgently. The wireless industry, and Bell Atlantic Mobile in particular, is poised to offer increasing competition to the local landline exchange business but we need your support. Our ability to do more for consumers – particularly in competing for local usage – depends on the Bureau and the Commission making deliberate efforts to *continuously improve competitiveness and continuously block regulation*. Attached are seven dockets that are critical.

The single most important principle I would suggest guiding your Bureau is what we call **"Convergence without Re-Regulation."** The competitive success of wireless can begin to converge toward traditional landline traffic – beginning with "minute migration" and "second line migration" and moving toward primary phone displacement. But this can only be done by clearing the way for already competitive wireless carriers to operate the way they know best – competitively – as they become catalysts to accelerate landline competition. Adding regulations to a competitive model, even stripped-down versions, will impact our operation and will prevent us from achieving the Commission's goals, free and open competition.

The top seven rulemakings that are currently our priorities for maintaining and increasing our competitive service to the public are: spectrum cap, flexible use, calling party pays, rate integration, CPNI, reseller interconnection, and antenna polarization. We at Bell Atlantic Mobile look forward to speaking to you at length about these.

Best regards,





## **REGULATORY OBSTACLES TO WIRELESS/LANDLINE COMPETITION**

The Commission should complete the following dockets urgently. Clarity on these issues will remove impediments to CMRS carriers' developing the business case for the major capital and resource commitments needed to compete for landline traffic.

### **1. CMRS SPECTRUM CAP (WT Docket 98-205. NPRM pending since December 1998.)**

If wireless is to make inroads on landline traffic, wireless networks will need to be able to support the same kinds of services and meet the same customer expectations that are characteristic of landline networks. Wireless networks will need to handle sharply higher volumes of traffic, different peak loads, longer-duration calls, and an increasing proportion of data to voice traffic. All of these demands will require significantly more spectrum; the alternative is slower competitive growth and less robust service. The current caps impose a needless constraint on the ability of CMRS providers to accommodate the capacity demands that entering the landline markets effectively will entail.

### **2. FLEXIBLE USE OF CMRS SPECTRUM. (WT Docket 96-6. Further NPRM pending since August 1996.)**

The FCC has granted CMRS providers the flexibility to offer fixed services over CMRS spectrum, but has still not resolved how such services are to be regulated. The CMRS industry has demonstrated that competition functions as the best regulator. Subjecting CMRS providers to inappropriate landline regulation will suppress wireless carriers' incentive to enter the landline market in conjunction with their mobile service. The FCC should be encouraging new entry by ensuring the absolute minimum degree of regulation is imposed on wireless providers using their CMRS spectrum.

### **3. CALLING PARTY PAYS. (WT Docket 97-207. NOI pending since October 1997.)**

Wireless services will not be viewed as comparable for landline services for many consumers unless and until a CPP option is available. BAM is committed to deploying such an option. However, regulatory uncertainty has stifled CPP. The FCC can remove that uncertainty by confirming that CPP, like other offerings by wireless carriers, is CMRS. It should also confirm that a disclosure to the calling party that a charge will be assessed for continuing the call is sufficient to create an obligation by the calling party to pay the charge.

### **4. RATE INTEGRATION. (CC Docket 96-61. Further NPRM issued April 1999.)**

In December 1998, the FCC refused to forbear from extending landline rate integration obligations to CMRS, despite a record that showed the anti-competitive consequences rate integration would have on wireless service. The new NPRM contains proposals which would make those consequences even worse, by forcing wireless carriers to distort their market-responsive pricing, in the name of meeting a policy that

was never intended to apply to wireless. The pricing flexibility that is essential to offer local service in different cities is not compatible with forced rate integration. Forbearance was the right legal and policy result. But this new proceeding directly impacts carriers' business case for entering local markets.

**5. USE OF CPNI BY CMRS PROVIDERS.**

**(CC Docket 96-115. Forbearance petitions pending since May 1998.)**

Last year, the FCC reversed years of pro-consumer CMRS practices by forcing CMRS providers to segregate the offering of wireless CPE and information services from the offering of CMRS itself. The record clearly shows that customers expect and benefit from bundled offerings, and that the forced segregation of the marketing of service and equipment only impairs communication between customers and carriers without any benefit. The FCC should allow the use of CMRS CPNI to be used to market wireless CPE and information services.

**6. RESELLER ISSUES: BUNDLING AND INTERCONNECTION.**

**(CC Docket 94-54. Recon. petition on bundling pending since August 1996. NPRM on interconnection pending since April 1995.)**

Given the vigorous competition that marks the CMRS industry, there is no basis in economic theory or in law for the FCC to require CMRS providers either to offer unbundled equipment or physical interconnection to resellers. The FCC never imposed such requirements before, yet the industry has seen rapid growth in competition and steadily lower prices. The resellers' claim that imposing these rules will improve competition lacks any merit, but the FCC needs to clear out these old proceedings to remove the uncertainty over these issues that impairs planning. There is even less plausible basis for such regulation than ever.

**7. CELLULAR ANTENNAS.**

**(RM-9387. Rulemaking petition pending since September 1998.)**

The FCC currently prohibits cellular carriers from deploying horizontally-polarized antennas for analog service, which restricts the polarization of our combined digital/analog sites as a practical matter. This is an anachronistic rule left over from the 1980s when the FCC imposed detailed technical regulation. Today, competing broadband PCS providers are not subject to this limit. This technical restraint seriously impedes successful competition for landline traffic for several reasons. First, cellular carriers could provide more effective in-building coverage for homes and businesses if not restricted to vertical polarization. Second, customers' phones would be able to detect more incoming calls, because the phones would respond more reliably when placed horizontally (as on a table or in a briefcase). Third, cell sites would be able to be designed more compactly, and therefore deployed more ubiquitously. This technical restraint directly frustrates the FCC's policy goals.